
OLR Bill Analysis

sHB 6548

AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING ALCOHOLIC LIQUOR REGULATION.

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BACKGROUND

SUMMARY

This bill makes various unrelated changes to the Liquor Control Act. Among other things, it:

1. conforms law with practice by allowing alternating proprietorships (sharing permit premises to produce alcoholic beverages) and contract manufacturing agreements (contracting to produce alcoholic beverages on behalf of another);
2. establishes two temporary permits, one for auctions and another for noncommercial entities (e.g., charities);
3. expands the farmers' market sales and festival permits to allow additional types of sales;
4. eliminates the sunset for certain permittees for on-premises consumption to sell for off-premises consumption;
5. prohibits anyone assisting an applicant, backer, or permittee in a liquor application from submitting a false statement;
6. lowers the minimum liquid capacity needed, from six to four gallons, to be considered a keg and allows manufacturers to sell kegs; and
7. makes various minor, technical, and conforming changes.

EFFECTIVE DATE: Various, see below

§§ 1 & 4 — ALTERNATING PROPRIETORSHIPS

Allows host manufacturers to have a tenant manufacturer share or rent their permit premises

The bill conforms law with practice by allowing a host manufacturer and tenant manufacturer to enter into an alternating proprietorship agreement, but under certain conditions.

Under the bill, an “alternating proprietorship agreement” or “agreement” means a written agreement between a host manufacturer and at least one tenant manufacturer under which the host agrees to share permit premises with, or rent permit premises to, a tenant manufacturer for the purpose of producing alcoholic beverages.

Agreement Requirements

The bill requires the agreement to provide that:

1. if the host manufacturer is sharing the permit premises with the tenant manufacturer under the agreement, the host or tenant is deemed to be in exclusive control and possession of those portions of the permit premises which the respective manufacturer is actively using to produce and store alcoholic beverages under the agreement; and
2. each manufacturer must separately hold title to all (a) ingredients, packaging supplies, and raw materials that he or she uses to produce alcoholic beverages under the agreement, all of which must be conspicuously labeled to identify which manufacturer possesses it; and (b) alcoholic beverages the manufacturer produces on the permit premises under the agreement, until the alcohol is removed.

The bill specifies that these provisions are not to be construed to prohibit a tenant manufacturer from purchasing ingredients, packaging supplies, or raw materials from the host manufacturer before the tenant manufacturer begins producing alcoholic beverages under the agreement.

Separation Requirements

The bill requires, during all stages of production, each alcoholic beverage a manufacturer produces under an agreement to be maintained separately from those produced by other manufacturers and so that the beverages' manufacturer is readily identifiable as the manufacturer's beverage.

Assumption of Risk of Loss

Each manufacturer who is party to an agreement assumes any risk of loss of an alcoholic beverage that he or she produces under it. The tenant manufacturer is prohibited from returning to the host any alcoholic beverage that he or she produces under the agreement.

Independence

The bill requires each manufacturer in an agreement to:

1. ensure the independence of his or her brands, marketing, product registrations, sales, and trademarks; and
2. separately maintain control and responsibility over the alcoholic beverages he or she produces under the agreement, as well as the production quantity of, and formula development and quality control standards for, the alcoholic beverage.

The bill specifies that this separation requirement does not preclude a tenant manufacturer from paying a host manufacturer for services rendered by a host manufacturer's employee for assisting the tenant manufacturer with any aspect of his or her operation.

Under the bill, each manufacturer under an agreement must:

1. maintain separate records on his or her production, sales, and any other matter the law requires;
2. file separate licensing, production, and sales reports with federal and state authorities as the law requires;
3. separately pay any alcoholic beverages tax due under the agreement;

4. be approved, licensed, or qualified by the federal Alcohol and Tobacco Tax and Trade Bureau as required by federal law;
5. be responsible for obtaining the manufacturer's (a) certificates of label approval (i.e., federal certificate that authorizes the bottling of wine, distilled spirits, or malt beverages, for commerce purposes, 27 C.F.R. 4.10), and (b) brand registrations from the Department of Consumer Protection (DCP); and
6. label each alcoholic beverage that he or she produces under the agreement with the manufacturer's business name and the address of the permit premises.

Prohibitions

The bill prohibits any manufacturer who is a party in an agreement from being owned by anyone who owns another manufacturer who is also a party to the agreement, except if the manufacturers are producing different classes of alcoholic beverages.

The bill specifies that the alternating proprietorship provision should not be construed to prohibit (1) multiple manufacturers from equally sharing the ownership or use of any permit premises, or (2) an out-of-state manufacturer from entering into an alternating proprietorship agreement with a host manufacturer as a tenant manufacturer, provided the out-of-state manufacturer applies for a Connecticut manufacturer permit.

Regulations

The bill allows DCP to adopt regulations to implement the alternating proprietorship provision.

EFFECTIVE DATE: Upon passage

§§ 1 & 5 — CONTRACT MANUFACTURING AGREEMENTS

Allows contracting parties (i.e., manufacturer, wholesaler, or certain out-of-state shipper's permittees) to produce an alcoholic beverage on behalf of a contracting party

Broadly, the bill allows a manufacturer to produce alcohol on someone's behalf. Specifically, the bill conforms law with practice by

allowing a contracting party to enter into a contracting manufacturing agreement with a primary manufacturer under certain conditions. Under the bill, “contracting party” is a manufacturer permittee, a wholesaler permittee, or an out-of-state shipper’s permittee for alcoholic liquor that owns the recipe for an alcoholic beverage. “Contract manufacturing agreement” or “agreement” means a written agreement, including a custom crush agreement, in which a primary manufacturer agrees to produce an alcoholic beverage on behalf of a contracting party. “Custom crush agreement” means a contract manufacturing agreement where a primary manufacturer produces wine on a contracting party’s behalf using the contracting party’s grapes or other fruit.

Primary Manufacturer Responsibilities

The bill requires the primary manufacturer to do the following under the agreement on the contracting party’s behalf:

1. maintain, at all times during the agreement, exclusive control and possession of all premises where he or she produces alcoholic beverages;
2. have sole responsibility for producing all alcoholic beverages;
3. label all alcoholic beverages produced with his or her business name and address;
4. maintain title to all ingredients that he or she uses during the production process unless the agreement is a custom crush agreement;
5. maintain title to all machinery and supplies that he or she uses during the alcoholic beverage production process;
6. maintain title to each alcoholic beverage he or she produces until the alcoholic beverage is removed from his or her permit premises;
7. maintain appropriate production records on all alcoholic beverages he or she produces;

8. obtain from the federal Alcohol and Tobacco Tax and Trade Bureau any certificate of label approval required for an alcoholic beverage that he or she produces; and
9. file any state registration requirements for an alcoholic beverage that he or she produces.

The bill also requires the primary manufacturer to pay any tax due on the alcoholic beverages he or she has produced for the contracting party. The bill allows the agreement to require that the contracting party reimburse them for the tax.

Inspections

Under the bill, the primary manufacturer must also provide to DCP, upon inspection or request, an up-to-date list and copies of all contract manufacturing agreements to which he or she is a party and production records on the agreements. This information must be provided to DCP in an electronic format unless it is commercially impractical.

Prohibitions

The bill also prohibits (1) primary manufacturers from selling at retail for off-premises consumption or at wholesale any alcoholic beverage he or she produces on behalf of the contracting party if a wholesaler permittee has the distribution rights for the alcoholic beverage, and (2) the contracting party from producing any alcoholic beverage on the primary manufacturer's permit premises.

Regulations

The bill allows DCP to adopt regulations to implement these provisions.

EFFECTIVE DATE: Upon passage

§§ 3, 6 & 8 — TEMPORARY AUCTION PERMITS

Establishes a temporary auction permit to allow the permittee to sell alcohol obtained from individual collectors through an auction

The bill establishes a temporary auction permit that allows the permittee to sell beer, spirits, and wine obtained from one or more

individual collectors through an auction an auctioneer conducts. An auctioneer is anyone who (1) regularly provides professional services by auctioning items for sale and (2) does not hold an alcoholic liquor permit. An individual collector is anyone who is not a backer (i.e., proprietor) or permittee or a backer's director, officer, or employee.

The auction may only be held during the hours a package store is allowed to sell alcohol (e.g., generally allowed between 8:00 a.m. and 10:00 p.m. on Monday through Saturday and between 10:00 a.m. and 6:00 p.m. on Sunday).

Application

To obtain a permit, an auctioneer must apply to DCP, in a form and manner it prescribes, at least 60 days before the auction starts. The applicant must serve as the permit's backer. Each permit is valid for one auction and is effective for a period of up to three consecutive days. DCP may not issue more than four permits to a backer in any calendar year. The permit fee is \$175 per day.

Nature and Duration of Permit

Similar to other alcohol permits under existing law, the bill makes the permit revocable at DCP's discretion and expires annually. The permit is to be a purely personal privilege and does not constitute property.

Obtaining Alcohol

Only beer, spirits, and wine from individual collectors can be auctioned. Additionally, an auctioneer can only accept alcohol that (1) the individual collector lawfully acquired and (2) bears an intact seal from the alcohol manufacturer.

The bill correspondingly allows an individual collector to sell or consign alcohol to an auctioneer and requires any unsold alcohol to be returned to the individual collector within 10 days after the final day of the auction.

Exemption

The bill exempts the alcohol sold at an auction under this permit from

the state’s brand registration, price posting, and selling below minimum retail cost prohibition. The bill prohibits alcohol from being resold, offered for sale, or otherwise used on the permit premises of any other alcohol permittee or its backer.

Samples and Tastings

Under the bill, the permittee may offer free tasting samples of any alcohol to be auctioned, but must first notify DCP (in a form and manner DCP prescribes) of its intent to do so at least 30 days before the auction’s first day. Similar to the restrictions on conducting auctions, tastings may only occur during the times a package store is allowed to sell alcohol. The bill prohibits (presumably, the permittee from conducting) tastings from being offered to any minor or intoxicated person, or from more than 10 uncorked or open cans or bottles at any one time.

Municipal Option

Under the bill, any town or municipality may, by ordinance or zoning regulation, prohibit the offering of the free samples by permittees at events or functions held in the town or municipality.

Shipping

The bill allows permittees to deliver and ship any auctioned alcohol directly to the consumer who purchased it. Any shipment to a consumer outside of the state is subject to all applicable laws of the jurisdiction where the consumer is located. When shipping the alcohol directly to a Connecticut consumer, the permittee must:

1. ensure that each container’s shipping label on each container states the following: “CONTAINS ALCOHOL –SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY”;
2. obtain the signature of a person who is at least age 21 at the delivery address prior to delivery, after requiring the person to demonstrate he or she is at least age 21 by providing a valid motor vehicle operator’s license or a valid identity card;
3. not ship the alcohol to any address in this state where the sale of

alcoholic liquor is prohibited by local option; and

4. make any such shipment through an in-state transporter permittee.

Regulations

The bill allows DCP to adopt regulations to implement the bill's temporary auctioneer provisions.

EFFECTIVE DATE: October 1, 2023

§§ 9 & 13 — FARMERS' MARKET ALCOHOL SALES PERMIT

Expands the farmers' market sales permit to allow manufacturer permittees for spirits to sell their product at a farmers' market and allows manufacturer permittees for spirits and beer to offer free tastings of their product at farmers' markets

Spirits

By law, manufacturer permittees for beer; farm winery; and wine, cider, and mead may obtain a farmers' market sales permit allowing them to sell their product at farmers' markets. The bill expands the permit to also allow manufacturer of spirits to sell spirits at a farmers' market.

Existing law allows these sales at the farmers' market if the permittee (1) has an invitation from the farmers' market; (2) only sells these products by the bottle or in sealed containers; and (3) is present, or has an authorized representative present, at the time of any sale. The permit authorizes the sale of these products during an unlimited number of appearances at a farmers' market and at up to 10 locations per year. Any town or municipality, by ordinance or zoning regulation, may prohibit the sale of these products at a farmers' market held in the town or municipality. The annual fee for the permit is \$250 with a \$100 nonrefundable filing fee.

Tastings

Additionally, existing law allows permittees for farm winery and wine, cider, and mead to sell and offer free tastings of their products at a farmers' market organized by a nonprofit. The bill also extends this to manufacturer permittees for spirits and beer.

EFFECTIVE DATE: Upon passage

§ 11 — ELIMINATION OF SUNSET FOR CERTAIN PERMITTEES FOR ON-PREMISES CONSUMPTION TO SELL FOR OFF-PREMISES CONSUMPTION

Eliminates the sunset for certain permittees for on-premises consumption to sell for off-premises consumption

The bill eliminates the sunset for the law that allows manufacturer, hotel, restaurant, club, nonprofit, and certain cafe permittees, until June 5, 2024, to sell and deliver sealed alcoholic liquor (e.g., beer, wine, or spirits) for off-premises consumption. Among other things, the law includes requirements that the:

1. alcoholic liquor sold for off-premises consumption be accompanied by food prepared on the permit premises;
2. sales be consistent with all local ordinances where the premises is located;
3. container, other than the manufacturer's original sealed container, be securely sealed in a way that prevents consumption without removing the tamper-evident lid, cap, or seal;
4. sales and deliveries be made (a) only during the hours package stores may operate under state law and (b) by the permittee's direct employee (or a third-party vendor or entity that holds an in-state transporter permit); and
5. sales comply with specified per-customer, per-order limits (i.e., 196 ounces for beer, one liter for spirits, and 1.5 liters for wine).

EFFECTIVE DATE: July 1, 2023

§§ 2, 7, 10, 12, 15, 17-18 & 20 — TEMPORARY LIQUOR PERMIT FOR NONCOMMERCIAL ENTITIES

Replaces several of current law's permits that are temporary or related to nonprofits and charities with a new temporary liquor permit for a noncommercial entity

The bill replaces several of current law's permits that are temporary or related to nonprofits and charities with a new temporary liquor permit for a noncommercial entity. Specifically, under the bill, the new

permit replaces and repeals: the temporary permit for outings, picnics, or social gatherings; special club permit for picnics; charitable organization permit; nonprofit public television corporation permit; and the nonprofit corporation permit (CGS §§ 30-25, -35, -37b, -37d, and -37h).

Under the bill, a noncommercial entity is an academic institution, charitable organization, government organization, nonprofit organization or similar entity that is not primarily dedicated to obtaining a commercial advantage or monetary compensation.

Nature and Duration of Permit

As under current law for the replaced permits, the temporary liquor permit for a noncommercial entity is, among other things, revocable at DCP's discretion and expires annually. The permit is to be a purely personal privilege and does not constitute property. The application fee is \$10 for each application.

Placarding

By law, alcoholic liquor permit applicants must generally give notice of a new permit in the newspaper and place placards visible from the road that include certain information, such as the business's name and location. As under current law for the replaced and repealed permits, the bill exempts temporary liquor permittees for a noncommercial entity from the notice and placard requirements.

Sales

The new permit allows the sale of beer, spirits, or wine at any fundraising event, outing, picnic, or social gathering ("event") a bona fide noncommercial entity, club, or golf country club conducts. The bill requires one of these entities to be the permit's backer (i.e., proprietor) and prohibits a for-profit entity from being the backer. The permit also allows for the retail sale of beer, spirits, or wine at an in-person or online auction if the auction is part of a fundraising event to benefit the tax-exempt activities of the noncommercial entity, club, or golf country club.

Profits

Under the bill, all profits from the auction or sale of the beer, spirits, or wine must be retained by the backer or permittee conducting the event. No portion of the profits may be paid, directly or indirectly, to any individual or other corporation.

Dates

The permit must be issued subject to DCP approval and is effective only for specified dates and times limited by the department. The combined total of events for which a permit is issued must not exceed 12 in any calendar year and the approved dates and times for each event must be displayed on the permit. The combined total of days for which the permit is issued must not exceed 20 days in any calendar year.

Hours of Sale

Under the bill, each permit is subject to the hours of sale established under the allowable alcohol times and hours law, but the bill does not specify which provision of the law this permit may sell under.

Permit

The permittee must display the permit and the days for which the permit has been issued in a prominent location next to the event entrance. The permit fee is \$50 per day.

Donations

The bill allows a manufacturer permittee, a wholesaler permittee, or package store permittee to donate to a temporary liquor permittee for a noncommercial entity, any beer, spirits, or wine they manufacture, distribute, or sell, respectively.

Off-Site Farm Winery Sales and Wine, Cider, and Mead Tasting Permit

Current law allows an off-site farm winery sales and wine, cider, and mead tasting permittee to sell and offer free samples of their products at up to seven events or functions per year held under a temporary liquor permit, a charitable organization permit, or a nonprofit corporation permit. The bill appears to remove the requirement that

these events are held at charitable or nonprofit functions, and instead allows these permittees to hold up to seven off-site events at any location under certain circumstances.

Prohibited Sales and Donations

Current law prohibits wholesaler permittees from selling alcoholic liquor to a temporary permittee for outings, picnics, or special gatherings or a charitable organization permittee, but excludes a nonprofit golf tournament permittee (e.g., Travelers Championship). The bill (1) extends this prohibition to the temporary liquor permit for a noncommercial entity, which replaces these permits, and (2) also prohibits sales to a nonprofit golf tournament permittee. As under existing law, these permittees must purchase alcoholic liquor only from package store permittees.

Additionally, the bill allows donations of any beer, spirits, or wine to which a wholesaler holds the distribution rights, to these permittees.

EFFECTIVE DATE: July 1, 2023

§ 14 — FESTIVAL PERMITS

Allows manufacturer permittees that hold an out-of-state shipper's permit for beer to make certain types of sales at a festival and ship directly to visitors

By law, a festival sponsor can organize and sponsor a festival in Connecticut by inviting eligible manufactures to participate. The bill removes a specific restriction on manufacturer permittees that hold an out-of-state shipper's permit for beer to make certain types of sales at a festival. Under the bill, these permittees may now:

1. sell and directly ship alcoholic liquor to festival visitors that the manufacturer sells to at the festival, if allowed under its permit;
2. sell, at retail, bottles and other sealed containers of alcoholic liquor for consumption off the festival premises, subject to its permit limitations (e.g., three liters of spirits per day and nine gallons of beer per day); and
3. sell, at retail, alcoholic liquor by the glass or receptacle for

consumption on the festival premises, so long as each glass or receptacle is embossed or permanently labeled with the festival's name and date.

EFFECTIVE DATE: Upon passage

§ 15 — FALSE STATEMENTS

Prohibits anyone assisting an applicant, backer, or permittee in a liquor application from submitting a false statement; violators may be subject to a \$1,000 civil fine and a CUTPA violation

The bill prohibits anyone who assists an applicant, backer, or permittee in submitting a liquor permit application from submitting, or causing to submit, any false statement connected to the application. He or she also must not engage in any conduct that delays or impedes DCP in processing the application. A violation is deemed a violation of the Connecticut Unfair or Deceptive Trade Practices Act (CUTPA).

The commissioner, after providing an opportunity for a hearing, may impose a civil penalty of up to \$1,000 per violation on anyone who violates this provision. She may also order the person to pay restitution to the applicant, backer, or permittee. Under the bill, all civil penalties paid, collected, or recovered must be deposited in the consumer protection enforcement account (DCP uses this account to enforce the licensing and registration laws it administers).

By law, CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and up to \$25,000 for a restraining order violation.

EFFECTIVE DATE: July 1, 2023

§ 16 — PERMITTEE REQUIREMENTS

Requires permittees to be a backer's director, employee, member, officer, partner, or shareholder

The bill requires a permittee to be a backer's director, employee, member, officer, partner, or shareholder. For this purpose, an "employee" is an individual whose (1) manner and means of work performance are subject to the backer's control or right of control, and (2) compensation is reported, or required to be reported, on a federal Form W-2 issued by, or caused to be issued by, the backer.

EFFECTIVE DATE: Upon passage

§ 19 — BEER KEGS

Lowers the minimum liquid capacity needed, from six to four gallons, to be considered a keg to meet industry standards; and allows manufacturer permittees for beer to sell kegs

Liquid Capacity Increase

The bill lowers the minimum liquid capacity needed, from six to four gallons, to be considered a keg, to meet industry standards. As a result, more containers must adhere to keg identification requirements (see below). As under existing law, a keg must be a brewery-sealed individual container of beer.

Manufacturer Permittees for Beer

The bill allows a manufacturer permittee for beer to sell kegs for off-premises consumption and extends existing law's requirements to these sales. As under existing law for package and grocery stores, the permittee must, at the time of sale, (1) place an identification tag on the keg; (2) require purchasers to sign a receipt; and (3) inform them that the deposit, if any, must be forfeited if the keg is returned without an intact and readable tag. The seller may inform buyers of this fact either verbally or by posting a conspicuous sign at the point of sale.

By law, the tag must be a numbered label DCP furnishes that clearly identifies the seller. It must be made and attached so that the beer manufacturer can easily remove it for keg cleaning and reuse. DCP may charge a reasonable fee, up to the actual cost, for supplying the tags and customer receipts.

The customer signature receipt must be a form provided by DCP stating the purchaser's name, address, driver's license number, or other identification set by regulation. The seller must keep a copy of all receipts on the premises and available for inspection and copying by department and criminal justice agencies for six months.

As under existing law, the bill prohibits manufacturers from refunding a keg deposit if the keg (1) does not have the required identification tag or (2) has one that is defaced and unreadable.

Under the bill, a manufacturer permittee who violates these provisions may have his or her permit revoked or suspended.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Bill

sSB 905, reported favorably by the General Law Committee, contains:

1. an identical provision that allows manufacturer permittees that hold an out-of-state shipper's permit for beer to make certain types of sales at a festival and ship directly to visitors, and
2. similar provisions on (a) temporary auction permits and (b) manufacturer permittees for spirits selling at farmers' markets.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 23 Nay 0 (03/02/2023)